

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

JOHN KELLEY, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as Secretary of Health and Human Services, et al.,

Defendants.

Case No. 4:20-cv-00283-O

Judge Reed O'Connor

UNOPPOSED MOTION OF THE STATES OF ILLINOIS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, THE DISTRICT OF COLUMBIA, HAWAII, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, AND WASHINGTON FOR LEAVE TO APPEAR WITHOUT LOCAL COUNSEL

The above listed States (“Proposed Amici States”), represented for the purpose of this motion by Illinois, through its Attorney General, respectfully seek this Court’s leave to participate in this litigation as *amici curiae*, through undersigned counsel, without local counsel as required under this Court’s Local Civil Rule 83.10(a).

INTRODUCTION

1. Plaintiffs John Kelley, Joel Starnes, Kelley Orthodontics, Braidwood Management, Inc., Gregory Scheideman, Donovan Riddle, Karla Riddle, Zach Maxwell, Ashley Maxwell, and Joel Miller seek to enjoin the Defendants from implementing or enforcing the preventive services provisions of the Affordable Care Act, and seek to obtain a religious exemption from the requirement that private, non-grandfathered insurance plans cover Pre-Exposure Prophylaxis (PrEP) medication.

2. The Defendants, represented by the United States Department of Justice, are Xavier Becerra, in his official capacity as Secretary of Health and Human Services, Janet Yellen, in her official capacity as Secretary of the Treasury, Martin Walsh, in his official capacity as Secretary of Labor, and the United States of America.

3. The Proposed Amici States will seek leave of this court to file an amicus brief in support of the Defendants and in furtherance of their interests in the subject matter of this litigation.

4. It is unlikely that the Proposed Amici States will be required to appear at hearings, decreasing the chance of any inconvenience to the Court of parties if this motion is granted. Further, because other government offices are exempt from the local counsel requirement, granting the same treatment to the Proposed Amici States will not detract from the requirement's goal of permitting the scheduling of hearings on short notice.

5. Accordingly, the Proposed Amici States respectfully seek leave to participate in this litigation without local counsel.

ARGUMENT AND AUTHORITIES

6. Under Local Rule 83.10(a), "local counsel is required in all cases where an attorney appearing in a case does not reside or maintain the attorney's principal office in this district." But Local Rule 83.10 permits an attorney "desiring to proceed without local counsel" to seek "leave from the presiding judge" to do so.

7. Local counsel, when secured, "must be authorized to present and argue a party's position at any hearing called by the presiding judge" and "to perform, on behalf of the party represented, any other duty required by the presiding judge or the local rules of this court." N.D. Tex. Civil R. 83.10(b).

8. As potential amici, the Proposed Amici States will not be “parties” to this action, and their presence is not likely to be required at any hearing in this action. Proposed Amici States intend to limit their participation in this case to the submission of a brief. As such, Proposed Amici States submit that the purposes of the local counsel rule do not require amici to participate in this case with local counsel.

9. Moreover, counsel for the Proposed Amici States certify to the Court that they will be available if called for a hearing on short notice, including any emergency hearings that may need to be held within twenty-four hours’ notice. Assistant Attorney General Elizabeth Jordan (whose *pro hac vice* application is filed concurrently) resides within 10 miles of Midway International Airport which has direct, approximately three-hour long flights to the Dallas Love Field airport. She has familiarized herself with the Local Rules of the Northern District of Texas, and is prepared to abide by its rules and procedures. *See* Declaration of Elizabeth Jordan.

10. Further, Local Rule 83.11 grants an exemption to the local counsel requirement for attorneys appearing on behalf of the United States Department of Justice who are otherwise eligible to appear in this court. Attorneys based in Washington, D.C. are counsel of record appearing on behalf of the United States Department of Justice for the federal defendants in this case.

11. As such, no additional delay is likely to result from granting the requested relief and treating the Attorney General of Illinois, representing for the purpose of this motion the Proposed Amici States, the same as other governmental law offices. As any hearing on short notice will likely require other counsel to travel as well, the chance that additional delay would be incurred for counsel for the Proposed Amici States to travel to attend such a hearing is low.

12. Although Local Rule 7.1(h) does not require a certificate of conference for this type of motion, counsel has conferred with counsel for the Plaintiffs and the Defendants regarding the relief requested here. No party opposes this motion.

13. Accordingly, Proposed Amici States respectfully seek leave to participate in this litigation without local counsel.

CONCLUSION

Wherefore, for the foregoing reasons, movants respectfully request that the Court enter an Order allowing them to appear without local counsel. They also seek *pro hac vice* admission for their counsel to the Northern District of Texas through the *pro hac vice* application filed concurrently. A proposed order is attached to this motion and also will be emailed to Chambers in word-processing format.

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

/s/ *Elizabeth H. Jordan*
Christopher G. Wells
Alex Hemmer
Elizabeth H. Jordan (Illinois Bar #6320871
(*pro hac vice* motion pending))
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DECLARATION OF ELIZABETH JORDAN

I, Elizabeth Jordan, declare:

1. I am an attorney at law in good standing licensed to practice in all Courts of the State of Illinois. I am also admitted to the General Bars of the United States District Courts for the Northern and Central Districts of Illinois. I have been appointed and currently serve as an Assistant Attorney General in the Special Litigation Bureau of the Office of the Attorney General for the State of Illinois. In this capacity, I have been assigned to appear on behalf of the Proposed Amici States in this matter. I have personal knowledge of the facts and would testify competently to those set forth herein.

2. I live within 10 miles of Midway International Airport, which has direct, approximately three-hour long flights to the Dallas Love Field Airport. I certify to the Court that if so required, I will be available for hearings called on short notice, including emergency hearings that may need to be held within twenty-four hours' notice.

3. Each of the attorneys in the Office of the Attorney General for the State of Illinois assigned to this case, including myself, have familiarized themselves with the Local Rules of the Northern District of Texas, and we are each prepared to abide by its rules and procedures.

Executed on this 28th day of January, 2022, at Chicago, Illinois.

/s/ Elizabeth Jordan
ELIZABETH JORDAN

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(b), I hereby certify that counsel for *Proposed Amici States* conferred with counsel for the Plaintiffs and counsel for the Defendants regarding filing this motion. Counsel for all parties indicated that they did not object.

/s/ Elizabeth Jordan
ELIZABETH JORDAN
(Illinois Bar #6320871 (*pro hac vice*
motion pending))

CERTIFICATE OF SERVICE

Pursuant to Local Rule 5.1(d), I hereby certify that on January 28, 2022, I filed the foregoing document using the Court's CM/ECF system. Service on all counsel of record for all parties was accomplished electronically using the CM/ECF system of the Court.

/s/ Elizabeth Jordan
ELIZABETH JORDAN
(Illinois Bar #6320871 (*pro hac vice*
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[PROPOSED] ORDER

Before the Court is Proposed Amici States' Motion for Leave to Appear Without Local Counsel (ECF No. ____), filed January 28, 2022. Having considered the motion, and noting that it is unopposed by the Parties, the Court finds that it should be and is hereby GRANTED.

Accordingly, it is **ORDERED** that Proposed Amici States' counsel is required to fulfill all local counsel requirements and abide by all local rules of this Court, including standards of litigation conduct set forth in *Dondi Properties Corporation v. Commerce Savings and Loan Association*, 121 F.R.D. 284 (N.D. Tex. 1988) (per curiam). The Court further advises that if proceeding without local counsel disrupts this litigation or otherwise results in failure to comply with the rules of this Court, Proposed Amici States will be required to immediately obtain local counsel.

SO ORDERED on this ____ day of _____, 2022.

Hon. Reed O'Connor
UNITED STATES DISTRICT JUDGE